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263 NLRB No. 30

D--9094  
Toledo, OH

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SONNY STEWART'S ENTERPRISES, INC.,  
d/b/a HARBOR HOUSE

and

Case 8--CA--13214

HOTEL AND RESTAURANT EMPLOYEES  
AND BARTENDERS UNION, LOCAL 868,  
AFFILIATED WITH HOTEL AND  
RESTAURANT EMPLOYEES AND BARTENDERS  
INTERNATIONAL UNION, AFL--CIO

DECISION AND ORDER

On September 12, 1980, the National Labor Relations Board issued an Order <sup>1</sup> adopting, in the absence of exceptions, the Decision of Administrative Law Judge Walter H. Maloney, Jr., directing Respondent Sonny Stewart's Enterprises, Inc., d/b/a Harbor House to, inter alia, offer reinstatement to certain employees and to make them whole for any loss of pay or benefits which they may have suffered by reason of Respondent's unfair labor practices against them. On February 10, 1982, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order. A controversy having arisen over the amount of backpay due under the Board's Order, as enforced by the court, the Regional Director for Region 8, on

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<sup>1</sup> Not reported in volumes of Board Decisions.

December 23, 1981, issued and duly served on Respondent <sup>2</sup> a backpay specification and notice of hearing alleging the amount of backpay due and notifying Respondent that it should file a timely answer complying with the National Labor Relations Board Rules and Regulations, Series 8, as amended. Respondent failed to file an answer to the specification.

On June 4, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and brief in support thereof, with exhibits attached. The Board, on June 11, 1982, issued an order transferring the proceeding to the Board and Notice To Show Cause why the General Counsel's motion should not be granted. Respondent has not filed any response to the Notice To Show Cause, and the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

#### Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations, Series 8, as amended, provides, in pertinent part, as follows:

(a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto . . . .

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<sup>2</sup> The backpay specification and notice of hearing was served on Reuben Stewart, Respondent's president and corporate agent for service, on February 24, 1982.

(c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. . . .

The backpay specification, issued on December 23, 1981, and served on Respondent by certified mail on February 24, 1982, states that Respondent shall, within 15 days from the date of service of the specification, file an answer to the specification with the Regional Director for Region 8, and that, if the answer fails to deny the allegations of the specification in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, such allegations shall be deemed admitted to be true and Respondent shall be precluded from introducing any evidence controverting them.

According to the uncontroverted allegations of the Motion for Summary Judgment, on March 22, 1982, after the time for filing an answer had expired, counsel for the General Counsel advised Respondent's president and agent, Reuben Stewart, by both regular and certified mail,<sup>3</sup> that Respondent's failure to file an answer to the specification by April 5, 1982, would result in a recommendation for summary judgment. Further, according to the General Counsel's uncontroverted allegations, numerous attempts to contact Stewart by telephone were unsuccessful. Stewart did, by letter received on May 17, 1982, notify counsel for the General Counsel that Respondent had gone out of business in October 1981. This response did not, however, constitute a timely

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<sup>3</sup> The certified letter was returned unclaimed.

answer; nor did it relieve Respondent of its obligation to answer the backpay specification.<sup>4</sup> As of June 2, 1982, the date of the Motion for Summary Judgment, Respondent had not filed an answer to the specification or requested an extension of time to file. Respondent also failed to file a response to the Notice To Show Cause. As Respondent has not filed an answer, or offered a satisfactory explanation for its failure to do so, the allegations of the specification are, in accordance with the rule set forth above, found to be true by the Board.

Accordingly, on the basis of the allegations of the specification which are accepted as true, the Board finds the facts as set forth therein, concludes that the net backpay due the employees is as stated in the computation of the specification, and hereinafter orders that payment thereof be made by Respondent to each employee named below.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Sonny Stewart's Enterprises, Inc., d/b/a Harbor House, Toledo, Ohio, its officers, agents, successors, and assigns, shall make whole each of the employees named below by payment to each of them of the amount set forth adjacent to her name, plus interest to be computed in the manner prescribed by the Board in Isis Plumbing & Heating Co., 138 NLRB 716 (1962),

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<sup>4</sup> Nelson Electric, Gary C. Nelson, Inc., and Gary C. Nelson Electric, 260 NLRB No. 3 (1982); and The Monroe Furniture Company, Inc., 231 NLRB 143 (1977).

and Florida Steel Corporation, 231 NLRB 651 (1977),<sup>5</sup> until all backpay due is paid, less the tax withholdings required by Federal and state laws:

Carol French                      \$1,629.16

Connie Tilimon                    1,603.42

Ann Danko                         1,464.39

Dated, Washington, D.C.        August 9, 1982

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John H. Fanning,                    Member

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Howard Jenkins, Jr.,               Member

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Don A. Zimmerman,                Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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<sup>5</sup> In accordance with his dissent in Olympic Medical Corporation, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.